



**US Army Corps
of Engineers**
Louisville, Huntington,
Nashville and Memphis
Districts

Public Notice

Public Notice No.
LOP No. 200600259

Date:
8 Mar 06

Closing Date:
6 Apr 06

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: Dr. Patricia Grace-Jarrett, CELRL-OP-FS
P.O. Box 59
Louisville, Kentucky 40201-0059

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NOTICE FOR THE INTENT TO ESTABLISH A LETTER OF PERMISSION

This notice announces the intent to establish a Letter of Permission (LOP) by the Louisville, Nashville, Huntington, and Memphis Districts U.S. Army Corps of Engineers (the Districts), in accordance with Title 33 CFR 325.5 (b)(2), published in the Federal Register, Volume 51, No. 219, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). The proposed LOP also supports the initiative directed by Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) to streamline the review process for transportation projects.

COVERAGE AREA: All "waters of the United States" (U.S.) in the Commonwealth of Kentucky.

CATEGORIES OF ACTIVITY COVERED BY THE LOP:

This LOP would authorize all activities performed on any public road by state and local governments and/or their agents. These activities include temporary and permanent work and fills that impact waters of the U.S. associated with:

1. Construction of roadway embankments and bridge abutments;
2. Installation of additional traffic lanes to existing roadways;
3. Upgrading and/or maintenance of bridges and other stream-crossing facilities;
4. Construction staging areas, borrow and disposal sites;
5. Stream bank stabilization;
6. Stream relocation;
7. Dredging, debris removal and excavation associated with the above activities; and
8. General maintenance activities associated with linear transportation facilities.

MAXIMUM LIMITATIONS:

Impacts to waters of the United States would be limited to seven acres of "waters of the U.S.", including wetlands, for a project rather than an individual crossing.

MITIGATION:

Impacts resulting from the relocation, encapsulation, or channelization of greater than 300 linear feet of intermittent or perennial stream; the filling of greater than 0.10 acre of waters of the U.S; or work causing more than minimal effects would require mitigation to compensate for impacts to the waters of the U.S. Other work or structures in navigable waters would be evaluated and must include mitigation to reduce the impacts to minimal levels.

RESTRICTIONS:

The work that would be authorized by this LOP would also be subject to the attached General Conditions and Special Conditions necessary to reduce impacts to a minimum level.

IMPLEMENTATION PROCEDURES:

1. Prior to submitting the application, the applicant would coordinate new alignment and realignment projects with the applicable District, the United States Environmental Protection Agency (USEPA), the Kentucky Department of Fish and Wildlife Resources (KDFWR), the Kentucky Division of Water (KDOW) for critical resources, the U.S. Fish and Wildlife Service (USFWS) in accordance with the Endangered Species Act, and the Kentucky State Historic Preservation Officer (SHPO) in accordance with the National Historic Preservation Act. This will allow early screening of proposed alignments and screening for State critical resources, Federally-listed threatened or endangered species or their critical habitats and for properties that may be listed or eligible for listing on the National Register of Historic Places. This early coordination would ensure compliance with the Section 404(b)(1) Guidelines and general conditions 5, 12 and 13. This coordination could be accomplished by regular, prearranged meetings hosted by the Districts and applicants such as the Kentucky Transportation Cabinet.

2. The Districts would review complete applications for project compliance with the terms, maximum limitations, and general conditions. The proposed general conditions have been adapted from the Corps' present standard permit conditions and the nationwide permit program.

3. The Districts would respond in writing to all complete applications within 45 days as to whether the LOP would be applicable or an Individual Permit would be required.

4. The Districts could, at their discretion, determine that the LOP is not appropriate and require a standard individual permit review of the proposal.

APPLICATION PROCEDURES:

Applicants proposing to conduct work under the proposed LOP would have to submit a complete application to the appropriate District and receive written notification that the proposed work is authorized by the LOP prior to the commencement of work in waters of the U.S. A copy of the complete application package would be provided concurrently to the KDOW, the KDFWR, the Kentucky SHPO, the USFWS, and the USEPA. Project notification requires the submittal of the standard Department of the Army (DA) permit application form ENG 4345 that must include the information listed in 1 through 7 below.

1. Name, address, and phone number of the permittee.
2. Location of the proposed work to include latitude and longitude or UTM.
3. Brief description, purpose, the dimensions including the size (linear distance and acreage) of the structure or fill area, fill quantity and type of fill being used.
4. Drawings on 8 ½ x 11-inch paper, including a location map, and plan and cross-section drawings illustrating all work to be done. These drawings must provide the exact dimensions and scale.
5. For any project that impacts jurisdictional wetlands, a wetland delineation is required and must conform to the Corps of Engineers' Wetland Delineation Manual, Technical Report Y-87-1. The site report with data forms and maps locating the data points must be provided.
6. For any project that impacts "waters of the U.S." requiring mitigation, functional assessment scores (or narrative documentation) must be provided for the existing conditions of the proposed impact and mitigation sites and for the predicted final quality of the mitigation.
7. A mitigation and monitoring plan that is consistent with the Corps' Regulatory Guidance Letter 02-02 and any local District guidance on mitigation.
8. Summary of alignment alternatives or completed alternatives analysis.
9. Copies of any early coordination letters from the KDFWR, the Kentucky SHPO, and the USFWS (see general conditions 12 and 13), documenting coordination and compliance with the Endangered Species Act and the National Historic Preservation Act.

AGENCY COORDINATION:

The above state and federal resource agencies would have 21 days to provide written comments to the appropriate District once the application package is received by them. Applicants are encouraged to send the packages by registered mail with return receipt requested.

EXCLUDED ACTIVITIES:

1. Activities that are denied any required local, State or Federal authorization.
2. Activities that the Districts determine to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors. The Districts may, on a case-by-case basis, require an individual DA permit. The Districts would notify the applicant that the project does not qualify for the LOP and instruct the applicant that authorization must be obtained under the standard Individual DA permit process. The Districts may also require an Individual DA permit for any After-the-Fact applications and/or any unauthorized activity regardless of whether or not the discharge meets the acreage and linear footage threshold limitations of this proposed LOP.

REVIEW PROCEDURES:

This LOP could not be issued if any legally required Federal, State, or local authorization or certification is denied. The LOP, if otherwise warranted, would not be issued until a State of Kentucky Water Quality Certification or waiver was on file at this office. In order to comply with Section 401 of the Clean Water Act, by copy of this notice, a State certification from the Kentucky Environmental and Public Protection Cabinet, Division of Water (KDOW) is being requested.

Copies of this notice are being sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this LOP. A request for a public hearing must state the specific interest that might be damaged by issuance of the LOP.

The decision whether to issue a LOP will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the LOP must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposed LOP will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water

supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, United States Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this LOP. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny this proposed LOP procedure. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of this LOP.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this LOP request. An LOP will be issued unless issuance is found to be contrary to the public interest.

Information pertaining to this proposed LOP is available for public examination during normal business hours upon prior request. All comments regarding this proposal should be addressed to Dr. Patricia A. Grace-Jarrett, CELRL-OP-FS, at the address noted above and should refer to the Public Notice Number 200600259-pgj.

GENERAL CONDITIONS:

1. Discharges of dredged or fill material into waters of the U.S. must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site). In determining the minimal impact threshold, the Districts will consider the direct, secondary, and cumulative impacts of the fill or work and any mitigation measures.
2. The permittee shall provide a mitigation/monitoring plan for impacts resulting from the relocation, encapsulation, or channelization of greater than 300 linear feet of intermittent or perennial stream; the filling of greater than 0.10 acre (4,356 sq. feet) of waters of the U.S.; or work causing more than minimal effects to compensate for impacts to the waters of the U.S. These impact thresholds are applied for each crossing. If mitigation is required, the permittee is expected to develop the mitigation site concurrently with the site construction. This will ensure that aquatic functions are not lost for long periods of time which could adversely affect water quality and wildlife.
3. The permittee shall ensure that sedimentation and soil erosion control measures are in place prior to any construction activity. This shall include the installation of straw bale barriers, silt fencing and/or other approved methods to control sedimentation and erosion. Sedimentation and erosion controls will not be placed in "waters of the U.S.", except if specifically approved by the District.
4. The permittee shall ensure that areas disturbed by any construction activity, including channel banks, are immediately stabilized and revegetated with a combination of non-invasive grasses, legumes and shrubs compatible to the affected area and that will not compete with native vegetation.
5. The permittee shall ensure that all in-stream construction activity is not performed during periods of high stream flow or during the fish spawning season between April 1 through June 30 without first contacting the Kentucky Department of Fish and Wildlife Resources (KDFWR) for their expertise on impacts to the fishery resource. Additionally, the discharge of dredged and/or fill material in known waterfowl breeding areas must be avoided to the maximum extent practicable.
6. The permittee will ensure that the activity authorized will not disrupt movement of those aquatic species indigenous to the waterbody, including those species which normally migrate through the area unless the activity's specific purpose is to impound water.
7. The permittee shall ensure that all construction equipment is refueled and maintained on an upland site away from existing streams, drainageways and wetland areas. Heavy equipment working in wetlands must be placed on mats, or other measures taken to minimize soil disturbance.
8. The permittee must comply with any case specific special conditions added by the Corps or by the State Section 401 WQC. The conditions imposed in the State Section 401 WQC are also conditions of this LOP.
9. The permittee shall ensure that no activity authorized by the LOP may cause more than a minimal adverse effect on navigation.

10. The permittee shall ensure proper maintenance of any structure or fill authorized by this LOP, including maintenance to ensure public safety.

11. The permittee shall not perform any work within any Wild and Scenic Rivers or in any river officially designated as a "study river" for possible inclusion in the system, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity authorized by the LOP will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal Land Management agency in the area (e.g. U.S. Forest Service, Bureau of Land Management or the U.S. Fish and Wildlife Service).

12. The permittee shall not perform any work under the LOP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. The permittee shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work under the LOP until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Authorization of an activity under the LOP does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act.

13. The permittee shall not perform any activity under the LOP which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The permittee must notify the District Engineer if the activity authorized by the LOP may affect any historic properties listed, determined to be eligible or which the permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin construction until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Kentucky Heritage Council.

If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by the LOP, work must be immediately stopped and this office immediately notified of what you have found. The District will initiate the Federal, tribal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

14. The permittee shall not perform any work under the LOP where the discharge of dredged and/or fill material would occur in the proximity of a public water supply intake.

15. No activity, including structures and work in waters of the United States or discharges of dredged or fill material may consist of unsuitable materials (e.g. trash, debris, car bodies, asphalt, etc.) and that materials used for construction or discharge must be free from toxic pollutants in toxic amounts.

16. The permittee shall, to the maximum extent practicable, design the project to maintain pre-construction downstream flow conditions. Furthermore, the work must not permanently restrict or impede the passage of normal or expected high flows and that the structure or discharge of fill must withstand expected high flows. The project must provide, to the maximum extent practicable, for retaining excess flows from the site and for establishing flow rates from the site similar to pre-construction conditions.

17. The permittee shall ensure that all temporary fills, authorized under the LOP, be removed in their entirety and the affected areas returned to pre-construction elevation.

18. Representatives from the Corps of Engineers and/or Kentucky Division of Water may inspect any authorized activity or mitigation site at any time deemed necessary to ensure compliance with the terms and conditions of the LOP, Section 401 WQC, and applicable laws.

20. All work authorized by this LOP must be completed within three years after the date of the Corps authorization letter. If you find you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least three months before the expiration date.

21. The permittee, after completion of work under the LOP, shall submit a signed certification letter regarding the completed work and required mitigation, if applicable. The certification letter will include a statement that the work was done in accordance with the LOP authorization including compliance with all general and special conditions and completion of mitigation work.